THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.21765 OF 2004

ORAL ORDER:

The petitioner claims to have purchased Sai Laxmi Theatre in the auction conducted by the Court of Senior Civil Judge, Bobbili. Admittedly, in respect of the said establishment an order was passed under Section 7A of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (for short "the Act"), determining the provident fund contributions and the said order has become final. Subsequent to the purchase, the petitioner was served with a notice dated 24.1.2003, calling upon him to remit a sum of Rs.1,07,274.85 ps towards arrears of provident fund for the period from October, 1991 to February, 1996 and from July, 1997 to September, 1998, failing which, steps will be taken for recovery of the amount by attachment of immovable property. Petitioner states that since the said arrears relate to the period prior to his purchase, he cannot be made liable for the same, and accordingly, he made a representation dated 17.05.2004 to the 1st respondent requesting to revise provident fund demand and to adjust the excess amount remitted by the new management. It is stated that the 1st respondent failed to consider the said representation. Hence this Writ Petition seeking a direction to the respondents 1 and 2 to receive the representation of the petitioner and to rectify and revise Account No.24633 of Sai Laxmi Theatre, Bobbili and in the meanwhile, to suspend the order dated 24.11.2003.

A detailed counter-affidavit has been filed by the Assistant Provident Fund Commissioner stating that by virtue of the provision of Section 17B of the Act, the writ petitioner being the transferee of the establishment in question is liable to pay the arrears of contribution. It is also stated that since the determination has already been made under Section 7A of the Act, the representation of the petitioner cannot be considered and the rectification of the account as sought by him cannot be ordered.

The fact that the petitioner has purchased the establishment in question is not in dispute. Under Section 17B of the Act, where an employer in relation to an

establishment, transfers that establishment in whole or in part, by sale, gift, lease or licence or any other manner whatsoever, the employer and the person to whom the establishment was transferred shall jointly and severally be liable to pay the contribution and other amounts sums from the employer under any provision of the Act. However, the liability of the transferee shall be limited to the value of the assets obtained by him by such transfer.

In view of the above statutory provision, the contention of the petitioner that he is not liable to pay the arrears of contribution relating to the period prior to his purchase is untenable. That apart, by virtue of Section 8G of the Act, the provisions of the Second and Third Schedules to the Income-tax Act, 1961 and the Income-tax (Certificate Proceedings) Rules, 1962 are made applicable so far as recovery of the amounts due from the employer under the provisions of the Act. In the circumstances, if the petitioner disputes the liability on any ground whatsoever, it is always open to him to work out the remedy as provided under Section 8G of the Act, read with Second and Third Schedules to the Income-tax Act, 1961.

Accordingly, the writ petition is dismissed granting leave and liberty to the petitioner to work out the appropriate remedy as available under law. No costs.

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(G. ROHINI, J.)

21st April, 2006.

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.21765 OF 2004

21st March, 2006.

Between:

R. Satya Rao. .. Petitioner.

And

The Provident Fund Officer,

Vizianagaram and two others. .. Respondents.